

Shilpi Agarwal, State Bar No. 270749  
Avram D. Frey, State Bar No. 347885  
Emi Young, State Bar No. 311238  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA, INC.  
39 Drumm Street  
San Francisco, CA 94111  
Telephone: (415) 621-2493  
Facsimile: (415) 255-1478  
Email: [sagarwal@aclunc.org](mailto:sagarwal@aclunc.org)  
[afrey@aclunc.org](mailto:afrey@aclunc.org)  
[eyoung@aclunc.org](mailto:eyoung@aclunc.org)

Justina K. Sessions, State Bar No. 270914  
Eunice Leong, State Bar No. 320499  
Olivia Rosen, State Bar No. 340120  
FRESHFIELDS BRUCKHAUS DERINGER US LLP  
855 Main Street  
Redwood City, CA 94063  
Telephone: (650) 618-9250  
Email: [justina.sessions@freshfields.com](mailto:justina.sessions@freshfields.com)  
[eunice.leong@freshfields.com](mailto:eunice.leong@freshfields.com)  
[olivia.rosen@freshfields.com](mailto:olivia.rosen@freshfields.com)

*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

JOSHUA SIMON, DAVID BARBER, AND  
JOSUE BONILLA, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO,  
PAUL MIYAMOTO, IN HIS OFFICIAL  
CAPACITY AS SAN FRANCISCO SHERIFF,

Defendants.

CASE NO.: 4:22-cv-05541-JST

(San Francisco County Superior Court,  
Case No.: CGC-22-601686)

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION TO ENFORCE  
PRELIMINARY INJUNCTION**

Hon. Jon S. Tigar  
Date: Sept. 12, 2024  
Time: 2:00 p.m.  
Dept: Courtroom 6  
Trial Date: Not Set

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**NOTICE OF MOTION AND MOTION TO ENFORCE PRELIMINARY INJUNCTION**

TO DEFENDANTS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs Joshua Simon, David Barber, and Josue Bonilla (“Plaintiffs”) on September 12, 2024 at 2:00 p.m., or as soon thereafter as the matter may be heard by the Honorable Jon S. Tigar in Courtroom 6, United States District Court for the Northern District of California, Oakland Courthouse, 2nd Floor, 1301 Clay Street, Oakland, CA 94612, shall, and hereby do, move for enforcement of the Court’s preliminary injunction against the City and County of San Francisco and Sheriff Paul Miyamoto, in his official capacity.

Plaintiffs seek relief pursuant to the Court’s inherent authority to effectuate and enforce compliance with its orders. *United States v. New York Tel. Co.*, 434 U.S. 159, 172 (1977) (federal courts may issue all orders “necessary or appropriate to effectuate and prevent the frustration of orders”); *Armstrong v. Brown*, 939 F.Supp.2d 1012, 1018 (N.D. Cal. 2013) (“A district court has the authority to make an enforcement order to secure compliance with its earlier orders and governing law”). Plaintiffs’ Motion is also brought pursuant to Federal Rules of Civil Procedure Rule 70.

This Motion is based upon this Notice of Motion and Motion to Enforce the Preliminary Injunction, the accompanying Memorandum of Points and Authorities, the Declaration of Sujung Kim in Support of the Motion and all exhibits and attachments thereto, the pleadings and papers on file in this action, and any oral and documentary evidence that may be presented at the hearing on this Motion.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This Motion is brought to enforce the Court’s preliminary injunction, which prohibits San Francisco Sheriff Paul Miyamoto (“Sheriff”), sued in his official capacity, “from imposing or enforcing any search condition broader than that stated in each class member’s Superior Court order[.]” ECF 77 at 41. In its Memorandum Opinion, the Court cautioned the Sheriff not to leverage its administration of pretrial electronic monitoring (“EM”) by threatening to deny release absent the Sheriff’s preferred conditions. *Id.* at 37–38 (evidence that the Sheriff “disabled the Superior Court from making individualized determinations of the appropriate conditions of release. . . . increases the likelihood that Plaintiffs will be able to show [violation of constitutional rights]”) (citing *In re York*, 9 Cal. 4th 1133, 1150–51 & n.10 (1995)). Yet the Sheriff is now doing exactly that. Specifically, the Sheriff is now detaining anyone ordered released on EM without a condition permitting warrantless searches of the releasee’s person, property, vehicle, and home (“four-way search condition”), in direct contravention of the Superior Court’s individualized release order. In so doing, the Sheriff is coercing the Superior Court to impose that condition in all cases, including cases in which the Superior Court found that condition unwarranted.

As detailed below, the Sheriff now asserts that as a matter of policy, it will not supervise release of anyone on EM absent court authorization to search their person, property, automobile, or home at any time, without a warrant or any degree of suspicion, even where the Superior Court determines that such release is appropriate. It has taken this position while explicitly acknowledging and disregarding this Court’s preliminary injunction, positing that the Order was wrongly decided. To date, the Sheriff has held individuals ordered released on EM in jail for a collective 50 days pursuant to this policy. The Sheriff is thus constructively “imposing or enforcing [a] search condition broader than that stated in each class member’s Superior Court order” in contravention of this Court’s preliminary injunction. *Id.* at 41. Accordingly, Plaintiffs ask this Court to find the Sheriff’s actions violate the preliminary

1 injunction and issue whatever orders the Court deems necessary to effectuate the injunction  
2 including, as necessary, a finding of contempt.

## 3 **II. FACTUAL DEVELOPMENTS**

4 Since the Court issued its preliminary injunction on February 13, 2024, Plaintiffs are  
5 aware of six cases in which the Superior Court ordered a defendant released on EM *without* a  
6 four-way search condition executable by the Sheriff. In each case, the Sheriff refused to  
7 execute the order of release, instead relaying to the lawyers and Superior Court that it would  
8 not release the individuals without a four-way search condition. The Sheriff insists that, as a  
9 matter of policy, it is not releasing anyone on EM absent a four-way search condition, no  
10 matter the decision of the Superior Court. The facts concerning these six cases and the Sheriff's  
11 admission are as follows:

### 12 (1) Ying Ng

13 The Superior Court held a bond hearing for Ying Ng on March 12, 2024. Declaration of  
14 Sujung Kim in Support of Plaintiffs' Motion to Enforce Preliminary Injunction ("Kim Decl.") ¶  
15 3. At that time, the court determined that release on EM was proper. *Id.*, Ex. 1 at 5:4–5. The  
16 court then admonished Mr. Ng:

17 Defendant shall submit to a search of their person, property and home at  
18 any time by San Francisco Sheriff's sworn staff or any peace officer acting  
19 on behalf of and with the express permission of the San Francisco  
Sheriff's Office.

20 *Id.* at 6:23–27. Thereafter, however, the court asked, "did I admonish him on the search  
21 condition?" before clarifying, "I didn't mean to do that. There is no search condition. The Court  
22 is not finding a warrantless search condition based on the facts of this case." *Id.* at 7:21–25. At  
23 the conclusion of the hearing, the court ordered Mr. Ng released after striking the four-way  
24 search condition. Kim Decl., Ex. 2.

25 On March 15, 2024, the District Attorney ("DA") on the matter emailed Mr. Ng's  
26 counsel at the San Francisco Public Defender's Office ("PDs") to say that he "was informed by  
27 the S.F. Sheriff's Department that your client, Mr. Ying Hop Ng, is still in custody. . . . because  
28 . . . . Judge Fleming did not include a warrantless search condition in his order for release on

1 electronic monitoring.” Kim Decl., Ex. 3 at 9. In subsequent communications between the PDs  
2 and the Sheriff, counsel for the Sheriff Rani Singh wrote:

3 At this juncture the SFSO cannot effectuate an HD [home detention] order  
4 without the search condition even if the court determines the search is  
5 limited to SFSO only, which is certainly an option. In order to set up the  
6 very program the court has ordered and do compliance checks as a  
7 condition if EM the SFSO needs to be able to enter the residence. That in  
8 itself necessitates a warranties [*sic*] search clause so that we do not violate  
9 participants’ rights. . . . The court had and still has several options. They  
10 can OR [release on own recognizance] the defendant, place him on ACM  
11 [assertive case management], order HD EM with a SFSO only search or  
12 any combination of the above.

13 *Id.* at 6–7. When the PDs responded that Mr. Ng was not in fact ordered released on home  
14 detention, Ms. Singh answered:

15 If EM with a monitor will be affixed the SFSO will have to enter the home  
16 correct? I also assume compliance checks will be part of his EM as well  
17 based on the history on this case and his unknown whereabouts for a  
18 decade. So if that is the case how would we effectuate that without a  
19 warrantless search to enter the home or encounter the client for non  
20 compliance interaction and possible search. Again, these are questions that  
21 ultimately should be discussed and the court has a plethora of options for  
22 release that don’t include EM.

23 *Id.* at 6. Ms. Singh and Sujung Kim of the PDs then exchanged text messages. Kim Decl. ¶ 6.  
24 After Ms. Kim stated that the Sheriff’s “rationale would apply to every EM case” and the  
25 “point of [Judge] Tigar’s injunction order is that it can’t be applied on a blanket basis,” Ms.  
26 Singh responded:

27 Then how is 4 th amendment not violated if we need to go into the home?  
28 . . . And you are assuming Tigar’s injunction first is correctly rooted and  
second that it will be upheld. That being said the court have choices and if  
they don’t want EM then they should not order it. . . . A private EM can go  
in someone’s house no fourth amendment issue.

Kim Decl., Ex. 4 at 4–5. Although Ms. Singh’s response appeared to reference the Sheriff’s  
appeal of the preliminary injunction order, ECF 85, the Sheriff has not challenged the  
provisions of the preliminary injunction relating to search conditions (Program Rule 5) in its  
appeal. Opening Br. at 5, *Simon v. City and County of San Francisco*, No. 24-1025 (9th Cir.  
Mar. 30, 2024), D.E. 23.1.

1 On March 22, 2024, Mr. Ng appeared again before the Superior Court. The Superior  
 2 Court then ordered Mr. Ng released on EM with a four-way search condition “until the Court  
 3 makes a final ruling as to whether or not he’s to remain on search condition after I receive  
 4 briefing from everyone.” Kim Decl., Ex. 5 at 6:23–26. Mr. Ng was ultimately released by the  
 5 Sheriff on March 25. Kim Decl. ¶ 8 & Ex. 6. He spent 13 days in jail after the Superior Court  
 6 initially ordered release without a search condition. Kim Decl. ¶ 8.

7 (2) José Chávez

8 The Superior Court held a bond hearing for José Chávez on March 19, 2024. *Id.* at ¶ 9.  
 9 The court ordered release on EM. Kim Decl., Ex. 7 at 6:25–26. The court then asked counsel to  
 10 approach and asked, “You guys notice this litigation (indiscernible)?” *Id.* at 7:27–28. The court  
 11 continued:

12 I’m willing to strike these types of conditions. I’m really just enforcing the  
 13 stay away, it’s not like—I don’t need 1035. . . .

14 . . . .  
 15 I don’t know if that’s going to raise release [*sic*]? I’ve heard cases kind of  
 16 third hand that if I strike it on the form, the Sheriffs won’t accept it and it  
 17 comes back.

18 . . . .  
 19 So some judges have been striking this language and sometimes it goes  
 20 through and sometimes it get[s] rejected . . . . So I’ll leave that up to you  
 21 what you want me to do. I’m not ordering it. I need to strike it from the  
 22 form.

23 *Id.* at 8:2–4, 6–9, 16–20. “1035” is a reference to a four-way search condition. Kim Decl. ¶ 2.  
 24 The court then entered an order of release on EM without the four-way search condition. *Id.*,  
 25 Ex. 8. The Sheriff did not release Mr. Chávez in response to this order. Kim Decl. ¶ 11.

26 On March 27, 2024 the Superior Court held a further hearing concerning Mr. Chávez.  
 27 *Id.* Counsel from the PDs stated that the case was calendared because the Sheriff had not  
 28 released Mr. Chávez in response to the court’s order; counsel asked the court to “order the  
 Sheriff to show cause of why it shouldn’t be held in contempt and for holding this person for  
 nine days in violation of this Court’s order.” *Id.*, Ex. 9 at 3:4–7. The court stated:

I’ve had a subsequent conversation with the Sheriff’s Department. My  
 understanding is they have a position that they cannot, for officer safety  
 and program reasons, accept people without the 1035. . . . I understand this  
 is up for litigation.



*Id.* at 3:9–15. In response to a renewed request for an order to show cause by defense counsel, the court stated:

I don't think the Sheriff is under the jurisdiction of the Court. . . . So I don't think this Court has any authority to order the Sheriff's—but that's subject to larger litigation at this point.

*Id.* at 3:23–4:3. The court then concluded:

Mr. Chávez, over your attorney's legal objections, I am now imposing the search condition I had previously said that I would not impose the search condition [*sic*] because I'm mostly interested in having you stay away from this area. But this is a requirement under the Sheriff's program and so you have to agree to the search condition despite your legal objections if you want to participate in this program.

*Id.* at 6:4–11. Mr. Chávez was released by the Sheriff that same day. *Id.*, Ex. 10. He spent eight days in jail following the Superior Court's initial decision to release him on EM absent a four-way search condition. Kim Decl. ¶ 13.

(3) Otis Mason

The Superior Court held a bond hearing for Otis Mason on March 21, 2024. *Id.* ¶ 14. The court ordered release on EM, adding "I'm striking the 1035 order on the Sheriff's sheet." *Id.*, Ex. 11 at 23:9. The court then signed a form order imposing release on EM without a four-way search condition. *Id.*, Ex. 12. The Sheriff did not release Mr. Mason in response to this order. Kim Decl. ¶ 16. Mr. Mason remained detained until April 4, 2024—14 days after the Superior Court's initial order—when he was released after he resolved his criminal charges for a credit for time served sentence. *Id.* & Ex. 13.

(4) Nathaniel Roye

The Superior Court held a bond hearing for Nathaniel Roye on March 26, 2024. Kim Decl. ¶ 17. At the hearing, the court stated that it would be inclined to order release on EM, then added:

I would not necessarily impose search conditions in this case as a Court order, but the sheriff's department's position is that they will only accept GPS referrals with the search condition in place.

. . . .  
I'm willing to strike it [the four-way search condition]. It would end up, I think, meaning he would stay in custody because the sheriffs won't accept him under the program.

1 *Id.*, Ex. 14 at 4:3–11, 19–22. In response to an objection from defense counsel, the court  
2 explained:

3           The alternatives I have before me are I can release him with a search  
4 condition. I can refer him to ICR [in-custody review]. Those are the two  
5 that I’m considering. If you want me to strike the 1035, and you can take a  
6 writ and appeal that, I’m willing to do that. I wouldn’t normally. As I’ve  
7 said on the record, this isn’t a case—I want to enforce the stay away order.  
8 There’s no weapon here that I’m concerned about. So I’m not imposing a  
9 search condition as a court order. I can’t control what the sheriff does with  
10 their program.

11 *Id.* at 6:22–7:2. In response to continued objection, the court stated:

12           I have given you the options. I think I’m defaulting right now to ordering ICR to  
13 see if there can be a plan developed for his release. If he got placement  
14 somewhere else, I think that could satisfy the Court as a different way to satisfy  
15 enforcement of the stay away order.

16 *Id.* at 7:20–25. Mr. Roye ultimately submitted to the Sheriff’s four-way search requirement to  
17 obtain release and was released on March 27, 2024, one day after the Superior Court indicated  
18 its desire to release him absent a four-way search condition. Kim Decl. ¶ 19 & Ex. 15.

19 (5) Luis Rosales Verde

20           The Superior Court held a bond hearing for Luis Rosales Verde on April 17, 2024. Kim  
21 Decl. ¶ 20. At that time, the court indicated its intention to order release on EM and stated:

22           I’m not separately ordering a Court 1035, but I would indicate to Mr. Rosales  
23 Verdes that, if he wants to participate in the sheriff’s program, they do require  
24 him to submit his person, his residence, his vehicle, any area under his control to  
25 a search at any time of the day or night, with or without a warrant, with or  
26 without his consent, with or without reasonable suspicion of probable cause.

27 Kim Decl., Ex. 16 at 6:4–10. In response to defense objection, the court stated, “I’d be happy to  
28 strike the language on the form if you want,” *id.* at 7–16, but counsel declined, stating, “we  
know where that ends with Mr. Rosales Verde staying in custody,” *id.* at 18–19. The court then  
ordered release on EM without striking the four-way search condition. Kim Decl., Ex. 17.

(6) Jackson Vandeusen

          The Superior Court held a bond hearing for Jackson Vandeusen on May 16, 2024. Kim  
Decl. ¶ 22. At the hearing, Mr. Vandeusen was ordered released on EM without a search

1 condition. *Id.*, Ex. 18. The Sheriff did not release Mr. Vandeusen in accordance with this order.  
 2 Kim Decl. ¶ 23.

3 On May 17, 2024, a representative of the Sheriff emailed the court clerk that the minute  
 4 order in Mr. Vandeusen’s case stated “Search Conditions are not Imposed.” Kim Decl., Ex. 19  
 5 at 5. The representative added:

6 [W]e will need the minute order corrected allowing a warrantless search  
 7 condition by at least the SF Sheriff’s Office covering the person, vehicle,  
 8 property, and home of the defendant, for him to participate in the SFSO  
 PTEM program. This will avoid violating the defendants Fourth  
 Amendment rights while on supervised release.

9 *Id.* In a subsequent email that day, Sheriff’s counsel Rani Singh elaborated:

10 The court can change its order to OR for the defendant if they do not feel  
 11 he needs the supervision required under our EM program guidelines. The  
 12 court can also order ACM in the alternative without EM. The court can  
 13 also order EM with 10-35 SFSO only which limits other law enforcement  
 from Engaging in a search. But as SFSO has made it clear we are not able  
 to effectively supervise someone on EM without the ability to do  
 compliance checks etc which may necessitate basic 10-35 allowances.

14 *Id.* at 2.

15 On May 20, the Superior Court held a hearing in Mr. Vandeusen’s case to address his  
 16 continued detention. Kim Decl. ¶ 24. At this hearing, the court stated, “[t]he program that  
 17 conducts the electronic monitoring does not want to monitor Mr. Vandeusen unless there is  
 18 what is called a 1035 search condition.” Kim Decl., Ex. 20 at 3:19–21. Defense counsel argued  
 19 that Mr. Vandeusen had by then been unlawfully detained four days in violation of the Superior  
 20 Court’s order and this Court’s preliminary injunction; counsel asked for an order to show cause  
 21 as to why the Sheriff should be held in contempt. *Id.* at 3:1–21, 5:7–16. The Superior Court  
 22 stated that it did not consider the Sheriff’s policy “unreasonable” and so would not issue an  
 23 order to show cause, but in any event, the court “relieve[d] Mr. Vandeusen of his electronic  
 24 monitoring condition” and directed that he be released to a drug treatment program as  
 25 previously ordered. *Id.* at 7:15–18. Mr. Vandeusen was released on May 30, 2024, and spent 14  
 26 days in jail beyond the court’s initial order of release on EM without a four-way search  
 27 condition. Kim Decl. ¶ 25 & Ex. 21.

### 1 III. LEGAL STANDARD

2 A district court has inherent authority to make orders to “secure compliance with its  
3 earlier orders and governing law.” *Armstrong v. Brown*, 939 F. Supp. 2d 1012, 1018 (N.D. Cal.  
4 2013); *see also Waffenschmidt v. MacKay*, 763 F.2d 711, 716 (5th Cir. 1985) (“Courts possess  
5 the inherent authority to enforce their own injunctive decrees.”); *In re Lafayette Radio Elec.*  
6 *Corp.*, 761 F.2d 84, 93 (2d Cir. 1985) (“[A]ncillary jurisdiction is recognized as part of a  
7 court’s inherent power to prevent its judgments and orders from being ignored or avoided with  
8 impunity”). Absent a stay, the district court retains jurisdiction to enforce a preliminary  
9 injunction while an appeal is pending. Fed. R. Civ. P. 62(c).

10 “A district court also has the inherent authority to enforce compliance with its orders  
11 through a civil contempt proceeding.” *Armstrong*, 939 F. Supp. 2d at 1018. On a motion to  
12 enforce a district court’s order, the court “has ‘wide latitude in determining whether there has  
13 been a contemptuous [defiance] of its order.’” *Stone v. City and County of San Francisco*, 968  
14 F.2d 850, 856 n.9 (9th Cir. 1992) (quoting *Gifford v. Heckler*, 741 F.2d 263, 266 (9th Cir.  
15 1984)); *Int’l Union, United Mine Works of Am. v. Bagwell*, 512 U.S. 821, 826 (1994) (“[C]ivil  
16 contempt sanctions, or those penalties designed to compel future compliance with a court order,  
17 are considered to be coercive and avoidable through obedience, and thus may be imposed in an  
18 ordinary civil proceeding upon notice and an opportunity to be heard.”).

### 19 IV. ARGUMENT

20 a. The Sheriff has violated a specific and definite order of the Court.

21 In issuing its preliminary injunction, this Court directed the Sheriff to cease “imposing  
22 or enforcing any search condition broader than that stated in each class member’s Superior  
23 Court order[.]” ECF 77 at 41. This Order protects all persons who have in the past been, are  
24 currently, or will in the future be subject to the EM Program Rules as revised in May 2023  
25 (“revised rules subclass”), *id.* at 27, 41, and was based on a showing that the Sheriff likely  
26 “impermissibly impos[es] its own intrusive conditions of release upon class members on a  
27 blanket basis without individualized assessment of their necessity by a neutral decision maker”  
28

1 and “disabled the Superior Court from making individualized determinations of the appropriate  
2 conditions of release.” *Id.* at 37–38.

3 Despite the clarity of this Order and its underlying rationale, the Sheriff has defied and  
4 attempted to undermine the Court’s directive at every turn. On March 19, 2024, Defendants  
5 filed a declaration signed by Undersheriff Katherine Johnson representing compliance with the  
6 preliminary injunction and indicating that the Sheriff was “not enforcing a search condition”  
7 for EM participants who did not have a court-ordered search condition. ECF 98 at ¶¶ 4, 6–7,  
8 12. At the same time, however, the Sheriff had already begun detaining persons the Superior  
9 Court ordered released on EM without a search clause, insisting—despite the Superior Court’s  
10 determination otherwise—that such a condition was necessary.<sup>1</sup> Kim Decl. ¶¶ 3–6. Indeed,  
11 when confronted with the inconsistency between the Sheriff’s actions and this Court’s  
12 preliminary injunction, counsel for the Sheriff responded by questioning the legal validity of  
13 this Court’s Order, stating “you are assuming Tigar’s injunction first is correctly rooted and  
14 second that it will be upheld.” Kim Decl., Ex. 4 at 4–5.

15 Thus, the Sheriff is complying with the Order only as to class members already  
16 supervised on EM at the time the preliminary injunction was issued. But for EM participants  
17 released since the Order was issued, the Sheriff is detaining persons ordered released without a  
18 search condition in an attempt to force the Superior Court’s hand and avoid the Order  
19 altogether. Such actions are plainly inconsistent with this Court’s preliminary injunction, not to  
20 mention the Sheriff’s duty to carry out individualized release orders issued by the Superior  
21 Court. *See* ECF 24 at 22 (representing the Sheriff acts as an agent of the state court “for  
22 purposes of implementing the court’s orders regarding conditions of pretrial of release”).  
23 Moreover, they indicate the Sheriff is continuing to mandate warrantless search authority as a  
24 condition of EM release in *every* case, even where the Superior Court explicitly determines the  
25 condition is unnecessary.

---

26  
27  
28 <sup>1</sup> The Sheriff’s claim of necessity is belied not just by the Superior Court’s determination, but  
also by its continued supervision of a sub-class of releasees who were already on EM at the  
time the preliminary injunction issued and for whom operation of Rule 5 was enjoined. *See*  
ECF 98.

1 By refusing to execute the Superior Court’s EM release orders and detaining people  
 2 who are ordered released without a search condition, the Sheriff is compelling the Superior  
 3 Court to impose a search clause or otherwise modify its release conditions simply to effectuate  
 4 its orders of release, as ultimately occurred in the cases of Ng, Chávez, Roye, Rosales Verde,  
 5 and Vandeusen. In four of these cases—Ng, Chávez, Roye, and Rosales Verde—the Sheriff’s  
 6 policy resulted in class members being released on EM with a search condition broader than  
 7 that determined necessary by the Superior Court based on an individualized assessment of the  
 8 least restrictive conditions of release. Kim Decl. ¶¶ 7, 12, 18–19, 21. Accordingly, the Sheriff’s  
 9 coercive actions amount to a flagrant violation of the Court’s Order not to “impose or enforce”  
 10 such conditions where not originally ordered by the Superior Court, and demonstrate that  
 11 Defendants are continuing to “disable[] the Superior Court from making individualized  
 12 determinations” of appropriate conditions of release. *See* ECF 77 at 37.

13 b. Further remedial orders or a finding of contempt are appropriate to prevent  
 14 continued violation of the Order and illegal detention of EM releasees.

15 The Sheriff’s statements defending its refusal to carry out EM release orders where the  
 16 Superior Court determines a search condition is unnecessary demonstrate that it has failed to  
 17 take “all reasonable steps within its power to comply” with this Court’s Order. *In re Dual-Deck*  
 18 *Video Cassette Recorder Antitrust Litigation*, 10 F.3d 693, 695 (9th Cir. 1993). Indeed, the  
 19 correspondence between the San Francisco Public Defender, the Superior Court, and legal  
 20 counsel for the Sheriff over a period of months indicate that the Sheriff developed and enforced  
 21 its policy requiring the Superior Court to order a search condition for all people released on EM  
 22 knowing that this position conflicted with the Order. Kim Decl., Ex. 3, 4, 19. At no point did  
 23 the Sheriff request clarification of the effect of the preliminary injunction or even inform this  
 24 Court of its new policy to detain people ordered released on EM unless and until a search  
 25 condition was imposed.

26 Meanwhile, the Sheriff’s detention of individuals despite the Superior Court’s order of  
 27 release has resulted in at least six people being illegally detained for a total of 50 days. This  
 28 situation is not tenable. As extensively briefed with the motion for a preliminary injunction,

under state and federal law, the Sheriff cannot unilaterally determine the conditions necessary to justify pretrial detention, much less override a judicial determination of release: to lawfully detain an arrestee pre-trial, “a court must first find by clear and convincing evidence that no condition [of release] short of detention could suffice and then ensure the detention otherwise complies with statutory and constitutional requirements.” *In re Humphrey*, 11 Cal.5th 135, 143 (2021) (emphasis added); *see also Gerstein v. Pugh*, 420 U.S. 103, 114 (“[T]he detached judgment of a neutral magistrate is essential...to furnish meaningful protection from unfounded interference with liberty.”). That class members have been, and will continue to be, detained due to the Sheriff’s intransigence and refusal to comply with the Court’s Order implicates a serious violation of their liberty interests, as “freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). The seriousness of this invasion warrants a commensurately significant response. *Calvillo Manriquez v. Devos*, 411 F. Supp. 3d 535, 540 (N.D. Cal. 2019) (“In considering what sanctions are justified, “[t]he private or public rights that the decree sought to protect are an important measure of the remedy.””). A finding of contempt and imposition of sanctions are therefore appropriate. At the very least, this Court should order the Sheriff to show cause as to why it should not be held in contempt or otherwise sanctioned for blatantly violating this Court’s preliminary injunction. *See Nuscience Corporation v. Henkel*, 2014 WL 12810112, at \*2 (C.D. Cal. Feb. 12, 2014) (district court may issue an order to show cause on basis of plaintiff’s representations regarding non-compliance with injunction).

## V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court find Defendants have violated the preliminary injunction and issue whatever remedial orders and sanctions it deems necessary and appropriate.

Dated: June 28, 2024

/s/ Emi Young

Shilpi Agarwal, State Bar No. 270749

Avram D. Frey, State Bar No. 347885

Emi Young, State Bar No. 311238



1 AMERICAN CIVIL LIBERTIES UNION  
2 FOUNDATION OF NORTHERN  
3 CALIFORNIA, INC.

4 39 Drumm Street  
5 San Francisco, CA 94111  
6 Telephone: (415) 621-2493  
7 Facsimile: (415) 255-1478  
8 Email: [sagarwal@aclunc.org](mailto:sagarwal@aclunc.org)  
9 [afrey@aclunc.org](mailto:afrey@aclunc.org)  
10 [eyoung@aclunc.org](mailto:eyoung@aclunc.org)

11 /s/ Eunice Leong

12 Justina K. Sessions, State Bar No. 270914  
13 Eunice Leong, State Bar No. 320499  
14 Olivia Rosen, State Bar No. 340120

15 FRESHFIELDS BRUCKHAUS DERINGER  
16 US LLP

17 855 Main Street  
18 Redwood City, CA 94063  
19 Telephone: (650) 618-9250  
20 Email: [justina.sessions@freshfields.com](mailto:justina.sessions@freshfields.com)  
21 [eunice.leong@freshfields.com](mailto:eunice.leong@freshfields.com)  
22 [olivia.rosen@freshfields.com](mailto:olivia.rosen@freshfields.com)

23 *Attorneys for Plaintiffs*  
24  
25  
26  
27  
28



**ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), I hereby attest under penalty of perjury that the signatories above have concurred in the filing of this document.

/s/ Eunice Leong  
Eunice Leong